military assistance to members of the ICC may be seen as an attempt to undermine the court and influence the decisions of other countries to join the ICC. By demanding special treatment in the form of immunity from the ICC, the United States is seen as bolstering the perception of its preference for a unilateral approach to world affairs and a determination to operate in the world exclusively on our own terms. As a result, U.S. efforts to build coalitions in support for the war against terrorism as well as the enforcement of UN resolutions against Iraq may have been impaired.

As an early advocate for the establishment of a permanent international criminal court based on balanced recognition of international statutes, I confess to being chagrined both at the inability of the international community to accommodate legitimate American concerns, and the all-or-nothing approach of our government that has left us without effective means to ensure that the ICC operates in ways that are consistent both with credible rule-of-law principles and with sensitivity to U.S. interests designed to advance democratic governance.

The problem is that as a great power called upon to intervene in areas of the world or disputes such as the Balkans, Afghanistan and troubled areas of the Middle East, the U.S. is vulnerable to charges being leveled against actions which we might reasonably consider to be peacekeeping, but another power or government might charge to be something very different. For instance, what would happen if Serbia were to bring a case against an American naval pilot when such a pilot is operating under both a U.S. and NATO mandate? The President has suggested we should, exclusive of all other countries, be allowed to veto over applicability of international law with regard to the ICC. Many other countries, including strong U.S. allies, have angst about this demand because they see this approach as establishing the principle of one country being entitled to operate above the law.

This is not an irresolvable dilemma. When the ICC treaty was under negotiation, it was the assumption of many that the Security Council where all the permanent members have a veto would play a determinative role in bringing matters better the ICC. If such was the case, the United States because of its veto power within the Security Council could fully protect itself as could the other permanent members. Unfortunately, because the past administration played an ambivalent role in development of the treaty, it failed to get the nuances right. This common sense approach was not adopted and the Bush administration was put in the embarrassing position of objecting to an important treaty because of the failed diplomacy of its predecessor.

Based on discussions with European officials it is my understanding that there may be an inclination to seek a reasonable compromise on treaty language, even at this late date. It would appear to be an umbrage to many countries to craft a provision excluding the United States alone from ICC jurisdiction, but it would seem reasonable on a process basis to return to a Security Council role. On this basis the U.S. and the international community could be credibly protected.

The court would function as a treaty organization founded on state consent, while respecting Security Council authority to refer any matters affecting international peace and security to the court's jurisdiction. This approach has the advantage that it does not make a pure exception for the United States. Understandable concerns of some countries about inequitable protection of the nationals of permanent members of the Council would need to be balanced against the enhanced durability and legitimacy of the court. A protocol to the Treaty ensconcing this approach should be actively pursued today.

Laws, to be effective, must constrain governments in their foreign policies as well as individuals in domestic acts. In order to hold governments accountable there must be individual accountability at the highest as well as lowest levels of society. Justice must be brought to the international frontier or life for too many will, in Hobbes' piercing phrase, continue to be ''nasty, brutish, and short.''

The central issue in classic just-war theory is the cause question. Just-war theorists from Augustine to Grotius typically referred to an offense that was a just cause for war as an ''injuria,'' a term that meant both injury and injustice. There were three generally accepted just causes of war: defense against aggression, recovery of property, and punishment. Wars waged for the first cause were by their nature defensive. Wars taken to avenge injustice and to punish the perpetrators of injustice were offensive in the sense that defense of one's own territory was not necessarily at issue.

It is sometimes forgotten that the United States is engaged in military combat operations over Iraq almost every day, maintaining ''no-fly'' zones over the northern and southern parts of the country. A decision by Iraq to ban almost all U.N. inspections on October 31, 1998, led the U.S. and Britain to conduct a 4-day air operation against Iraq on December 16–20, 1998 (Operation Desert Fox). The two allies launched approximately 415 missiles and dropped more than 600 bombs targeted at Iraqi military and logistical facilities. Since the December 1998 operation, the U.S. and Britain have carried out air strikes against Iraqi air defense units and installations on a frequent basis, in response to Iraqi attempts to target allied aircraft enforcing the no-fly zones. However, to launch a full-scale military invasion of Iraq, fully considering its potential consequences, based solely on violations of the no-fly zones would appear to be out of proportion to the offense occasioning it.

A potentially more compelling basis for just cause would be action undertaken in self-defense, in this case anticipatory self-defense.

Although the UN Charter is premised on the concept of collective security, it is important to recognize that the Charter also recognizes the right of nations to use force for the purpose of self-defense. Article 51 provides that nothing in the Charter ''shall impair the inherent right of individual or collective self-defense'' in the event of ''armed attack.'' The question, of course is what constitutes armed attacks.

In this regard, no American administration has ever sought to give an expansive interpretation to the definition of an armed attack. Indeed, none of our interventions since the end of World War II have relied for justification on the doctrine of preemptive attack.

Tellingly, when the United States was directly threatened during the 1962 Cuban missile crisis, President Kennedy did not invoke any notion of ''anticipatory self-defense.'' While the risks of nuclear conflagration were high, the president's legal arguments were conservative: the imposition of a naval quarantine was justified by reference to the regional peacekeeping provisions of the U.N. Charter. More recently, when America has claimed self-defense, it has been in less controversial settings—citing a clearly defined threat to U.S. citizens or, after September 11, the need prevent a second attack by hostile terrorists.

Rather than expanding the scope of preemptive attack, American statesmen have historically played leading roles in carefully limiting the doctrine.

The classic formulation of the right of preemptive attack was provided by secretary of State Daniel Webster. In 1837, the British sought to stamp out a simmering revolt in Canada that had received support from private militias in the Untied States. To cut off this source of support, British troops launched a night raid into New York, burning an American ship and sending it over Niagara falls.

Some five years later, Secretary of State Webster reached an agreement with the Foreign Office that prohibited future cross-border raids. Preemptive force under customary international law could be justified only if there was a ''necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation,'' and if the use of force in such circumstance were proportional to the threat—not ''unreasonable or excessive.'' Webster's formulation remains the core sense of international law today.

Some might object that these standards are unreasonable and inappropriate for a new era of global insecurity hallmarked by the threat of stateless terrorism. On the other hand, it surely cannot be in our interest to legitimize war by hunch. The danger is that new standards we seek to reserve exclusively for our use become legitimate as well for other nations—such as Russia, China, India and Pakistan. Do we want to empower others to claim that issues relating to self-defense are not a proper subject of international concern, but are solely unilateral national decisions unreviewable by any state or multilateral organization? Without clear standards, whenever a nation believes that its interests, which it is prepared to characterize as vital, are threatened, then its use of force in response would become permissible.

As to the precise nature of the threat posed by Saddam, the historical record is well-known. Saddam Hussein is a menace to his own people and a continuing threat to the Middle East and the Persian Gulf. Saddam is without question an international criminal with a long rap-sheet.

He began successive wars of aggression against Iran and Kuwait, amassed a large inventory of chemical and biological weapons in violation of the Biological and Toxin Weapons Convention (BWC), and has feverishly sought to build nuclear arms in violation of the Nuclear Nonproliferation Treaty (NPT). On the orders of Saddam Hussein, his army committed some of the worst war crimes in half a century, gassing Kurdish villages and killing thousands of innocent civilians. Even after its defeat in the Persian Gulf War, Saddam sought to hide and even reconstitute his weapons of mass destruction in violation of numerous UN Security Council Resolutions. There is little dissent, therefore, from the proposition that the Iraqi regime represents a continuing threat to the region and a challenge to international